

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
BENEFYTT TECHNOLOGIES, INC., <i>et al.</i> , ¹)	Case No. 23-90566 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION
SEEKING ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO FILE THE DIP AGENT FEE LETTER UNDER SEAL**

Emergency relief has been requested. Relief is requested not later than 2:00 p.m. (prevailing Central Time) on May 23, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on May 23, 2023, at 2:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's homepage. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Benefytt Technologies, Inc. (2634); American Service Insurance Agency LLC (9115); Benefytt Reinsurance Solutions, LLC (4601); BimSym-HPIH, LLC (4626); Dawn Acquisition Company, LLC (0909); Daylight Beta Intermediate Corp. (7248); Daylight Beta Intermediate II Corp. (8842); Daylight Beta Parent Corp. (6788); Health Insurance Innovations Holdings, Inc. (1994); Health Plan Intermediaries Holdings, LLC (0972); Healthinsurance.com, LLC (9525); HealthPocket, Inc. (3710); Insurance Center for Excellence, LLC (4618); RxHelpline, LLC (9940); Sunrise Health Plans, LLC (3872); TogetherHealth Insurance, LLC (9503); TogetherHealth PAP, LLC (8439); and Total Insurance Brokers, LLC (7975). The location of the Debtors' service address is: 3450 Buschwood Park Drive, Suite 200, Tampa, Florida 33618.

your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² state the following in support of this motion (this “Sealing Motion”):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”): (a) authorizing the Debtors to file under seal the Fee Letter (as defined below), of which the Debtors are seeking approval pursuant to the Debtors’ *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the “DIP Motion”)³ filed contemporaneously herewith and (b) directing that the Fee Letter shall remain under seal and confidential and not be made available to anyone, without the prior written consent of both the Debtors and the DIP Agent (as defined below) except to (i) the Court, (ii) the United States Trustee for the Southern District of Texas (the “U.S. Trustee”), (iii) any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), and (iv) any other party as may be ordered by

² A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Michael DeVries, Chief Financial Officer of Benefytt Technologies, Inc. in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith on May 22, 2023 (the “Petition Date”).

³ Capitalized terms used but not defined in this Sealing Motion shall have the meanings set forth in the First Day Declaration or the DIP Motion, as applicable.

the Court or agreed to by the Debtors and the DIP Agent, in each case under appropriate confidentiality agreements reasonably satisfactory to the Debtors and the DIP Agent that preserves the confidentiality of the Fee Letter (and any information derived therefrom).

Jurisdiction

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b). The Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 9018, and rules 9013-1(i) and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

5. The Debtors are a technology-driven distributor of insurance products covering Medicare-related insurance plans as well as other types of health insurance and supplemental products that operate in 44 states including Texas, New York, California, and Florida. Headquartered in Tampa, Florida and employing approximately 855 people, the Debtors develop and operate Medicare and private health insurance online marketplaces, insurance agent technology systems, and insurance policy administration platforms, as well as conduct marketing and lead generation for insurance providers. The Debtors provide self-guided online tools for individuals to compare Medicare, private, and supplemental health insurance products; an extensive network of licensed insurance agents empowered by a technology platform to facilitate enrollments; and other insurance technology allowing agents and brokers to service their

customers and manage their business seamlessly.

6. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated as of the date hereof.

7. By the DIP Motion, the Debtors seek, among other things, authorization to obtain a \$35.0 million priming superpriority senior secured delayed draw debtor-in-possession term loan facility (the “DIP Facility”), with \$25.0 million available upon entry of the Interim Order and the remaining \$10.0 million available upon entry of the Final Order.

8. In connection therewith, the Debtors seek authorization to file under seal that certain administrative agent fee letter (the “DIP Agent Fee Letter”) relating to the DIP Facility identifying the specific respective fees to be paid to Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the “DIP Agent”).

9. The Fee Letter contains sensitive and confidential commercial information regarding the structure and amount of the fees relating to the DIP Facility. Because the disclosure of this information could harm the Debtors and the DIP Agent, the Debtors seek authority to file the Fee Letter under seal and to provide for the limited disclosure of the Fee Letter as provided herein.

Basis for Relief

10. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This section provides, in relevant part that, “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1).

11. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Bankruptcy Rule 9018 provides, in relevant part, that on motion “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Additionally, Bankruptcy Local Rule 9037-1 provides, in relevant part, that “[a] motion, reply, or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”

12. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *In re Orion Pictures Corp.*, 21 F.3d at 28; *see also In re*

Faucett, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D.Tex. 2004) (“A bankruptcy court is *required* to seal ‘documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.’”) (emphasis added)). Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *In re Orion Pictures Corp.*, 21 F.3d at 27–28. Once a court determines that a party in interest is seeking to protect “commercial information,” the court “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27.

13. The terms of the Fee Letter are the product of good-faith negotiations. The disclosure of the terms of the Fee Letter would likely cause substantial harm to the Debtors and the DIP Agent, create an unfair advantage for competitors, and violate the Debtors’ agreement with the DIP Agent to keep the terms of the Fee Letter confidential. The Fee Letter reflects detailed proprietary information describing fees to be paid in connection with the DIP Facility, which information is customarily considered by the DIP Agent, in particular, as well as the finance lending industry, in general, to be highly sensitive and confidential information not typically disclosed to the public. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of the fee structures set forth in the Fee Letter be kept confidential so that competitors cannot use the information contained therein to gain a strategic advantage in the marketplace.

14. Good cause exists to authorize the Debtors to file the Fee Letter under seal because of the harm that would ensue if the sensitive and confidential commercial information contained in the Fee Letter became public information.

Emergency Consideration

15. The Debtors request emergency consideration of this pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” This requests relief from procedural rules and requirements that pertain to matters of immediate significance or which involve deadlines sooner than twenty-one days after the Petition Date. The relief will save costs and avoid undue administrative burden and confusion only if granted immediately. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this on an emergency basis.

Notice

16. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Consenting Term Lenders; (d) counsel to the Consenting Revolving Lenders; (e) counsel to the DIP Lender; (f) counsel to the agents under the Debtors’ postpetition credit facilities and DIP credit facility; (g) the state attorneys general for each of the states in which the Debtors operate; (h) the United States Attorney’s Office for the Southern District of Texas; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) other governmental agencies having a regulatory or statutory interest in these cases; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: May 23, 2023

/s/ J. Machir Stull

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and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge.
This statement is being made pursuant to Local Rule 9013-1(i).

/s/ J. Machir Stull

J. Machir Stull

Certificate of Service

I certify that on May 23, 2023, I caused a copy of the foregoing document to be served
by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern
District of Texas.

/s/ J. Machir Stull

J. Machir Stull